

Newspaper and Mail Deliverers' Union of New York City and Vicinity and New York News Inc. and New York Mailers Union Number 6, International Typographical Union, AFL-CIO. Case 29-CD-316

30 April 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 17 May 1983 by the Employer, alleging that the Respondent, Newspaper and Mail Deliverers' Union of New York City and Vicinity (Drivers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by New York Mailers Union Number 6, International Typographical Union, AFL-CIO (Mailers). The hearing was held 20 September 1983 before Hearing Officer Jane B. Jacobs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a New York corporation, is engaged in the production, distribution, and sale of newspapers at various facilities, including its facility in Brooklyn, New York. The Company annually receives gross revenue from its publishing operations exceeding \$200,000, and holds membership in, and subscribes to, interstate news services, publishes nationally syndicated features, and advertises nationally sold products. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Drivers and Mailers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Company publishes and distributes the New York Daily News and the New York Sunday News. Although the main section of the two newspapers remains the same, the Company publishes different editions for New York City's five bor-

oughs, for Nassau and Suffolk counties, and for New Jersey. The Company's Manhattan and Brooklyn plants currently produce many of the editions. In 1982 the Company developed a reorganization plan that entailed opening two new plants and closing the Manhattan plant. In early 1983 the Company decided to transfer production of its Staten Island edition from the Manhattan operation to the Brooklyn plant as part of its plan to phase out the Manhattan operation and print all city editions at the Brooklyn plant. On 16 March the Company informed the Unions by letter that the transfer would be effective 23 March.¹ The Drivers replied by letter dated 18 March that, unless the Company assigned jurisdiction over certain work associated with the transfer to Drivers-represented employees, it would strike. On 23 March the Company began production of its Staten Island edition at the Brooklyn plant, using Drivers-represented employees to perform the claimed work.

The Company uses large presses to print its newspapers. Each press is linked by a conveyor to equipment and machinery known as a stacker line, which is located in the "mailroom." After newspapers arrive at a stacker line they pass through a counting machine; a stacking machine then stacks them into bundles. On some lines the conveyor carries the bundles to a tying machine, which ties the bundles with plastic or wire. The number of newspapers in a bundle varies according to the thickness of the particular edition being printed. An automated stacker line transports the tied bundles on additional conveyor belts directly to loading docks. Nonautomated stacker lines do not extend to loading docks; consequently, bundles on such lines must be manually removed and distributed.

Drivers-represented routemen transport and deliver newspapers from the printing plant to "drops." The number of newspapers assigned to a particular drop varies, but in almost every instance the routeman must determine for each drop the number of bulk bundles required, plus an additional number of newspapers to make up the predesignated total. If, for instance, a given drop takes 160 newspapers, and the bundles that day consist of 75, the routeman delivers 2 bundles and an "odd bundle" of 10 newspapers that are tied manually. Newspapers used to supplement orders are called "odds" or "odd bundles."

The method of making odds differs significantly in the Manhattan and Brooklyn plants. At Manhattan, most of the stacker lines are automated. Drivers-represented employees remove tied bundles from nonautomated lines, put the bundles on roll-

¹ All dates are in 1983.

ing tables, and roll the tables to a central distribution center, where Drivers-represented delivery clerks are stationed. The clerks, who account for and dispense newspapers in the center, assign the tables to routemen, who roll them to loading docks and place the bulk bundles into their trucks. Mailers-represented employees, however, remove untied bundles from nonautomated lines and roll them to the distribution center, where the delivery clerks assign them to routemen in the same fashion as the tied bundles. The routemen use the untied bundles to make odds, and the tied bundles for "bulk" delivery.

Because only 4 of Brooklyn's 12 stacker lines are automated, many more tables are used there to transport the newspaper bundles from nonautomated lines. The conveyor takes all newspapers through tying machines. Drivers remove the tied bundles from the line and place them on rolling tables. Because the Brooklyn plant has no central distribution center, Drivers-represented clerks are stationed throughout the mailroom. Drivers-represented employees roll the tables to the delivery clerks, who count the papers, determine how many are needed for bulk delivery and for odds makeup, and assign them to Drivers-represented routemen. These assignments occur in the mailroom near the stacker lines. After routemen obtain their newspapers, they proceed to any accessible area within the mailroom and cut open some of the tied bundles to make up odds. The Brooklyn process, unlike Manhattan's, does not use Mailers-represented employees to remove any bundles from the stacker lines, either for bulk delivery or for odds makeup; only Drivers-represented employees transport bundles from the stacker line to the clerks.

When the Company permanently transferred its Staten Island edition from Manhattan to Brooklyn in March 1983, it retained the Brooklyn procedure for assembling odds. During the decade preceding 1982, the Company occasionally produced at the Manhattan plant editions normally printed at the Brooklyn plant; conversely, sometimes a Brooklyn edition was temporarily moved to the Manhattan plant. Without exception, the Company produced and distributed the transferred editions using the system where the edition was printed.

B. Work in Dispute

The disputed work involves removing newspapers from nonautomated stacker lines and delivering them on rolling tables to employees who use the newspapers to make up odd bundles at the Company's facility in Brooklyn, New York.

C. Contentions of the Parties

The Company contends that the work should be awarded to Drivers-represented employees based on company preference and past practice, area and industry practice, economy and efficiency of operation, and safety. Drivers contends that the work should be awarded to employees it represents, based on its collective-bargaining agreement with the Company, company preference and past practice, area and industry practice, and economy and efficiency of operation. Mailers contends that the work should be awarded to Mailers-represented employees based on its collective-bargaining agreement and past practice at the Manhattan plant.

D. Applicability of the Statute

The parties have stipulated, and uncontroverted evidence supports the stipulation, that Drivers informed the Company that, unless the disputed work were assigned to Drivers-represented employees, Drivers would strike. The parties also stipulated that there is no agreed method of voluntary resolution of this dispute. We therefore find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 136 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

There is no evidence that the Board has certified either Drivers or Mailers as the collective-bargaining representative for a unit of the Company's employees.

The Mailers' jurisdictional clause, at section 3(a) of its collective-bargaining agreement with the Company, provides that jurisdiction "heretofore recognized shall be preserved," and that the Company and Union intend that the agreement "neither

take away nor add to such jurisdiction." The jurisdictional description which follows, at section 3(b), preserves all "mailing work," but precludes either party from invoking the jurisdictional description "to change present work." Section 3(c) reads: "Both parties to this Agreement wish to preserve during its lifetime the historical jurisdiction of New York Mailers' Union No. 6 in the plants of the Publishers signatory." Section 1(k) is a general provision referring to the parties' "historical rights" and their mutual desire to preserve them "to the greatest possible extent." A separately executed memorandum of agreement establishes "manning levels" for certain work, but section H of the document specifically excludes from those provisions "the handling of loose or tied bundles for delivery dept. odds by employees covered by the Contract." It is readily apparent that none of these provisions grants the claimed work to Mailers-represented employees, and section 3(c) preserves Mailers jurisdiction only as it has historically existed in particular company plants.

The Drivers' collective-bargaining agreement with the Company is silent as to jurisdiction of the work in dispute, and section 2, under "Occupation Coverage," contains no language specifying that the work belongs to employees it represents. Section 2-H.1 reads in pertinent part: "Conditions and methods of operation now prevailing in the respective mailrooms of the Publishers shall not be disturbed insofar as they affect the jurisdiction of the several unions operating in the mailrooms." This provision fixes jurisdictional lines as they have traditionally existed at, in this instance, the Brooklyn plant. Accordingly, we find that this factor favors assignment of the disputed work to Drivers-represented employees.

2. Company preference and past practice

The Company has assigned the work to employees represented by Drivers, and the assignment is consistent with longstanding practice at the Brooklyn plant. The Company prefers this assignment. This factor therefore favors an award to employees represented by Drivers.

3. Area and industry practice

No significant evidence was introduced at the hearing establishing an area or industry practice for the disputed work. Therefore, this factor does not favor an assignment to employees represented by either Union.

4. Relative skills

Because performance of the work requires no special skills, this factor favors assignment neither

to Drivers-represented nor Mailers-represented employees.

5. Economy and efficiency of operations

The Brooklyn operation, unlike Manhattan's, ties all bundles on the stacker lines. They are then loaded and transported to delivery clerks for assignment. A clerk assigns the bundles to a routeman, who cuts the tie on some of the bundles to assemble his odds for that day's delivery. Assignment of the disputed work to Mailers-represented employees would require the Company to distinguish between bulk and odds bundles as the bundles leave the lines to be loaded. Separation of bulk and odds bundles at that juncture is unnecessary and inefficient. Further inefficiency would result from the Company's having to hire Mailers-represented employees to perform the work. As those employees loaded and transported odds bundles to the clerks, Drivers-represented employees would have no work to do. Similarly, Mailers-represented employees would stand idle while Drivers-represented employees loaded and transported bulk bundles. Consequently, more employees would be doing the same work currently performed by Drivers-represented employees, and it would be done less efficiently. Accordingly, we find that this factor favors an award to employees represented by Drivers.

6. Safety

Evidence was adduced that the rolling tables sometimes cause hand and finger injuries. The Company and the Drivers contend that the incidence of such injuries would rise if the disputed work were assigned to Mailers-represented employees, due to increased mailroom traffic. Because the evidence in support of this contention is wholly speculative, we cannot say that this factor favors assignment of the work in dispute to employees represented by either Union.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Drivers are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between the Company and the Drivers, company preference and past practice, and economy and efficiency of operation. In making this determination, we are awarding the work to employees represented by Drivers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of New York News Inc. represented by Newspaper and Mail Deliverers' Union of New

York City and Vicinity are entitled to perform the work of removing newspapers from nonautomated stacker lines and delivering them on rolling tables to employees who use the newspapers to make up odd bundles at the Company's facility in Brooklyn, New York.